

From: [Boxerman, Samuel B.](#)
To: [Nurkin, Gary](#)
Cc: marc.michael@aes.com; Buente Jr., David T.; slowrance@verizon.net
Date: Thursday, April 11, 2013 12:48:27 PM
Attachments: [image001.jpg](#)
[2013.01.10 Letter S. Boxerman to G. Nurkin PDF](#)

Dear Gary -

I write on behalf of AES Puerto Rico (AESPR).

As I indicated to you earlier this week, we received your emails of April 3, 2013 advising that the draft EPA LEAF report was finalized in December of last year and has been made available on the Agency's website. To put it mildly, we are extremely disappointed to learn this. As near as we can tell, the final report does not differ materially from the draft, meaning the numerous concerns we raised – including the gross mistakes we identified – regarding the draft report have not been addressed in any way in the final document that EPA has chosen to publish. I attach another copy of our letter explaining these problems in detail.

AESPR has been responsive to EPA's requests for information and have been trying to work cooperatively with the agency over the past year to respond to your concerns regarding the use of CCPs, including AGREMAX, in Puerto Rico. We traveled to New York to meet with the Region and then provided a proposal for discussion to address your concerns. As such, it is extremely troubling that a report commissioned by EPA Region 2 Enforcement in connection with a particular party has been released to the public in final form during this enforcement process without prior notice to AESPR or any consideration of our detailed technical comments.

Further, as you know, after we received the draft report on November 8, 2012 we worked diligently to digest and respond to the wholly unprecedented draft report. We promptly requested additional information regarding the draft report, including the actual data templates used to generate the LEAF test results so we could analyze the results. That was not provided until December 13, 2012. But even before we received the backup data, we raised a number of concerns with EPA about the draft report. We emphasized those concerns in our conference call on December 7 and then again at our meeting with the Region on December 17, 2012. These included not only concerns about the fundamental approach and presentation of the draft report, but some very basic mistakes in EPA's work that produced gross errors in the results. Moreover, as I am sure you will recall, we made it very clear during our December 17 meeting that we would be documenting our concerns in writing – and you and your colleagues acknowledged that you were expecting our letter. We provided that letter to EPA soon after the holidays, on January 10, 2013.

However, the LEAF Report is now being cited by Public Justice in its threat to sue AESPR under RCRA. It is also being trumpeted by opponents of AESPR's plant in Puerto Rico. Given that EPA has not addressed or responded to any of the many problems we pointed out with the draft report, we request that the Agency immediately withdraw the report and remove the version of the report from its website.

Thank you.

Samuel B. Boxerman
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
Tel. (202) 736-8547
Cell (301) 356-1960
Fax (202) 736-8711
sboxerman@sidley.com

PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT
ATTORNEY CLIENT COMMUNICATION



SIDLEY AUSTIN LLP

IRS Circular 230 Disclosure: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication, including attachments, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding any penalties that may be imposed on such taxpayer by the Internal Revenue Service. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addressed in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

***** ATTACHMENT NOT DELIVERED *****

This Email message contained an attachment named
image001.jpg
which may be a computer program. This attached computer program could
contain a computer virus which could cause harm to EPA's computers,
network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced
into the EPA network. EPA is deleting all computer program attachments
sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you
should contact the sender and request that they rename the file name
extension and resend the Email with the renamed attachment. After
receiving the revised Email, containing the renamed attachment, you can
rename the file extension to its correct name.

For further information, please contact the EPA Call Center at
(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

***** ATTACHMENT NOT DELIVERED *****